Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

COMMENTS
of
UNITED STATES CELLULAR CORPORATION

Grant B. Spellmeyer
Executive Director – Federal Affairs & Public Policy

UNITED STATES CELLULAR CORPORATION
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

David A. LaFuria
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

January 18, 2012

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SUMMARY

U.S. Cellular welcomes this opportunity to comment on further proposals made by the Commission in connection with its ongoing effort to transform and modernize its universal service rules and mechanisms to facilitate the deployment of fixed and mobile broadband networks throughout rural America.

MOBILITY FUND PHASE II

U.S. Cellular argues that the Commission should proceed with implementing its Mobility Fund Phase I single-winner reverse auction, and disbursing Phase I support, before making any decisions regarding the disbursement mechanism for Phase II. Reserving judgment regarding whether to use a forward-looking economic cost model or a single-winner reverse auction for Phase II until the Commission has gathered information regarding the performance of the auction mechanism in Phase I, and has provided interested parties with an opportunity to review and comment on this information, would enable the Commission to make an informed, data-driven decision regarding the Phase II disbursement mechanism.

If the Commission ultimately decides to use a single-winner reverse auction for Phase II, it should conduct the auction in a manner that does not compare bids from all bidders across all geographic areas. This flawed approach would penalize auction bidders proposing to deploy mobile broadband services in higher-cost areas, and would risk depriving some states with higher-cost eligible service areas from receiving any Phase II support.

U.S. Cellular demonstrates the superiority of a cost model for purposes of disbursing Phase II support, by examining the effectiveness of a cost model in ensuring the efficient use of universal service funding and by drawing upon the existing record in this proceeding to again identify the numerous disadvantages of the single-winner reverse auction mechanism. U.S. Cel-

lular explains that restricting support to a single carrier in each service area is not competitively neutral, erects barriers to competitive entry, is detrimental to consumers, and fails to comply with statutory mandates to promote competition in connection with the implementation of universal service policies.

U.S. Cellular urges the Commission not to prejudge this issue of selecting a Phase II disbursement mechanism based on the decision it has already made regarding the Phase I mechanism, but instead to engage in a deliberate and open-minded analysis of the respective advantages and disadvantages of the two alternatives. U.S. Cellular is confident that such an exercise will lead to adoption of a cost model as the Phase II disbursement mechanism.

U.S. Cellular also addresses numerous other issues concerning the Commission's proposals for Mobility Fund Phase II. U.S. Cellular opposes the controid method for determining the availability of service because this method is likely to treat large census blocks in low-density rural areas as "served" even though consumers in substantial portions of the blocks are not receiving the required level of mobile broadband service. U.S. Cellular also opposes prioritizing areas for support based on their current level of service, favoring an approach that focuses on deployment of 4G broadband throughout all rural areas.

Although U.S. Cellular strongly supports the use of a cost model for the disbursement of Phase II support, it would not oppose using a cost model for the purpose of identifying areas that would be eligible for Phase II support, in the event the Commission adopts a reverse auction mechanism for Phase II, because a cost model would be capable of providing an accurate evaluation of areas with high costs.

U.S. Cellular supports the Commission's proposal to require Phase II support recipients to meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream, because this would result in actual speeds at or above 4 Mbps downstream and 1Mbps upstream in many portions of a service area and because requiring speeds of 4 Mbps downstream and 1Mbps upstream throughout a service area, including out to the edge of mobile broadband networks, would be difficult to accomplish and would drive up network costs. In addition, although U.S. Cellular supports the Commission's proposal to impose collocation and data roaming requirements on Phase II recipients, U.S. Cellular strongly disagrees with any suggestion that these requirements could solve problems associated with the anti-competitive incentives inherent in a single-winner reverse auction.

U.S. Cellular also supports the Commission's proposal to use the number of road miles in each eligible geographic area as the basis for establishing bidding units and coverage requirements that must be met by funding recipients, as well as the proposals to permit support recipients to partner with other providers to meet Phase II public interest obligations, and to establish a 10-year term of support for Phase II funding recipients.

U.S. Cellular argues in favor of a renewal opportunity for Phase II support recipients (which should not be an automatic renewal) because this could help offset one of the significant disadvantages of the single-winner reverse auction mechanism, *i.e.*, the likelihood it would make it more difficult for smaller carriers seeking to deploy broadband infrastructure in rural areas to secure private investment. U.S. Cellular also argues that the Commission should engage in a rulemaking to modify any Phase II performance metrics, and that the Commission should place limits on package bidding so that such bids are permitted only with respect to aggregations of geographic areas that are within the boundaries of a county.

CONNECT AMERICA FUND PHASE II

The Commission has decided in the *Order* to use a reverse auction to award Phase II CAF support in price cap areas in which incumbents do not exercise their Commission-mandated option to be exclusive funding recipients. U.S. Cellular argues that this reverse auction mechanism should support more than a single provider in each eligible service area. U.S. Cellular also argues that, in identifying areas eligible for support, the Commission should exclude from support any area already served at speeds of at least 4 Mbps downstream and 1 Mbps upstream, and that the Commission should not give areas currently without any broadband service a priority for the receipt of CAF Phase II support awarded in reverse auctions because this would detract from the overall goal of deploying 4G broadband networks throughout rural America.

Recipients of CAF Phase II auction-awarded funding should be permitted to partner with other service providers for purposes of meeting Phase II public interest obligations, and funding recipients should not be required to finance any fixed percentage of their network deployment from sources other than CAF Phase II funding, since the Commission's certification requirements regarding a funding recipient's financial and technical capabilities should be sufficient to ensure that the recipients will meet Phase II obligations.

U.S. Cellular also favors permitting CAF Phase II funding recipients to propose different price levels for offering services at different performance levels because this approach, by allowing more technologies to compete for funding, should result in more competitive bidding, but U.S. Cellular opposes permitting incumbent price cap carriers to be eligible to participate in CAF Phase II auctions if they decide not to exercise their right of first refusal.

OTHER ISSUES

U.S. Cellular argues that the Commission should adopt speed measurement criteria that effectively account for the unique characteristics of mobile broadband networks, and that the Commission should adopt a presumption that, if a carrier is offering the same rates, terms, and conditions (including any capacity limits) to both urban and rural customers, this is sufficient to meet the principle of reasonable comparability. U.S. Cellular also favors the use of different benchmarks for fixed and mobile broadband services for purposes of determining reasonable comparability.

U.S. Cellular opposes AT&T's suggestion that the Commission should "reinterpret" Section 214(e)(1) of the Communications Act of 1934 to require the provision of service only in areas where those services are supported under the Commission's funding mechanisms, to the extent AT&T's approach would have the effect of reducing any regulatory obligations that apply to carriers irrespective of their receipt of any CAF or Mobility Fund support.

U.S. Cellular favors the use of forfeiture requirements instead of letters of credit as the device for enforcing compliance with public interest obligations, since LOCs would have the effect of reducing the amount of capital available to support recipients (especially smaller carriers), and would thus diminish the value realized from the disbursement of CAF and Mobility Fund support.

In light of the wide disparities in the Commission's budget, which favor rate-of-return and price cap carriers to the detriment of mobile broadband providers, U.S. Cellular opposes any suggestion that the Commission should accommodate the shortfall between the Commission's budget for rate-of-return carriers and the budget proposed by these carriers' representatives, including the proposal that any savings realized from the administration of support mechanisms should be funneled to rate-of-return carriers. Such savings should instead be used to augment the modest budget the Commission has established for Mobility Fund Phase II.

Finally, U.S. Cellular argues that the Commission's reporting rules should be designed in a manner reflecting differences in mobile broadband providers' operations and in the nature and purpose of funding provided to Mobility Fund support recipients.

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COMMENTS
of
UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("U.S. Cellular"), by counsel, hereby submits these Comments, pursuant to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

[1] *Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *High-Cost Universal Service Support,* WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Federal-State Joint Board on Universal Service,* CC Docket No.

U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier ("ETC") status and is currently receiving high-cost support for its operations in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin. U.S. Cellular has been an active and ongoing participant in these Connect America Fund ("CAF"), Intercarrier Compensation ("ICC"), Mobility Fund, and related rulemaking proceedings since their initiation by the Commission.

I. INTRODUCTION.

As the Commission proceeds with the next phase of its efforts to reform and modernize the universal service system "to ensure that robust, affordable voice and broadband service, both

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96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) ("*Order*" and "*Further Notice*"), *recon.*, FCC 11-189 (rel. Dec. 23, 2011), *further recon. pending*. The due date for comments on sections of the *Further Notice* addressed in these Comments is January 18, 2012. The *Further Notice* extends inquiries and builds on proposals made by the Commission in *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657 (2010) ("*CAF NOI/NPRM*"); *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Notice of Proposed Rulemaking, 25 FCC Rcd 14716 (2010) ("*Mobility Fund NPRM*"); *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("*USF-ICC Reform NPRM*"); and *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, Public Notice, DA 11-1348 (WCB rel. Aug. 3, 2011) ("*August 3 PN*").

fixed and mobile, are available to Americans throughout the nation[,]"[2] it faces the challenging task of designing and adopting rules and mechanisms for Phase II of the Mobility Fund.

In addition to addressing numerous other issues raised in the *Further Notice*, U.S. Cellular in these Comments makes three central arguments regarding the Commission's approach to the task of adopting a Phase II disbursement mechanism.

■ The Commission should take its time. The record in this proceeding reflects considerable skepticism regarding whether a single-winner reverse auction mechanism is the best means of ensuring that Mobility Fund support will be used efficiently and effectively in deploying broadband networks and bringing broadband services to rural consumers. The Commission did not adequately address this record in the *Order* in deciding to adopt a single-winner reverse auction mechanism for use in disbursing Mobility Fund Phase I support. Moreover, the *Further Notice* can be read as telegraphing the Commission's view that it is predisposed to take the same approach in adopting a Phase II disbursement mechanism.

Nevertheless, the Commission has sought comment regarding its adoption of a Phase II disbursement mechanism, and U.S. Cellular is confident the Commission intends to give deliberate consideration to proposals and arguments in the record before taking action. Unfortunately, however, the timeline on which the Commission is currently operating gives it scant, if any, time to gather and evaluate the results of its Mobility Fund Phase I single-winner reverse auction for purposes of making informed, supportable, and data-driven judgments and decisions regarding the rules and mechanisms it should use for Phase II.

U.S. Cellular proposes that the Commission, before taking further action, should allow sufficient time for the Phase I auction to proceed, for Phase I disbursements to be made, and for

[2] *Order* at para. 1.

interested parties and the Commission to review accumulated data and assess the extent to which the Phase I reverse auction mechanism has been successful in meeting the Commission's expectations, in avoiding the numerous pitfalls and shortcomings commenters have described in the record and that U.S. Cellular discusses in these Comments, and in adhering to the Commission's principles for the universal service reform process.

When the Commission proceeds with its deliberations regarding Mobility Fund Phase II, U.S. Cellular suggests that the Commission should approach the cost model versus reverse auction issue in *de novo* fashion, making a rigorous comparison of the advantages and disadvantages of these two approaches for the Phase II disbursement mechanism. U.S. Cellular is confident that the results of the Phase I reverse auction will confirm what the record already has made evident: Single-winner reverse auctions are an inferior mechanism for disbursing Mobility Fund support.

■ If the Commission ultimately decides to adopt a reverse auction mechanism for Phase II, the mechanism should not compare all bids across all geographical areas in the same auction for purposes of determining winners and disbursing support.

If all bids, across all areas, are compared with all other bids, with support awarded first to bidders making the lowest per-unit bids, this would have the effect of allocating virtually all of Phase II support to lowest-cost areas, with carriers proposing to serve higher-cost areas having little chance to prevail in the auction regardless of their capabilities for delivering economically efficient services to those areas. If the Commission takes this approach, U.S. Cellular envisions outcomes in which entire states with eligible service areas would receive no Phase II funding, because the costs for serving these areas are too high to produce winning auction bids.

■ The Commission should not adopt a single-winner reverse auction mechanism. As U.S. Cellular has indicated, its view is that the results from the Phase I reverse auction experiment will demonstrate that the use of reverse auctions will create incentives for winning bidders to provide services with higher rates and lower levels of quality, and it will be difficult and costly for the Commission to police winning bidders to guard against these incentives.

Consumers in rural areas will be harmed by a single-winner reverse auction to the extent the Commission is not successful in curbing these incentives and because consumers would be deprived of choices for their broadband services. Finally, the Commission has other options for Phase II disbursement mechanisms that avoid these incentives and adverse results, while also ensuring that the Commission's mobile broadband deployment goals for Phase II can be met within the Commission's budget.

II. MOBILITY FUND PHASE II.

The Commission seeks comment in the *Further Notice* regarding the structure, implementation, and administration of Mobility Fund Phase II. In the following sections, U.S. Cellular urges the Commission to delay adopting any disbursement mechanism for Phase II until the Commission is in a position to properly evaluate the results of its use of a single-winner reverse auction mechanism to allocate Phase I support. U.S. Cellular further argues that if, after such a review, the Commission ultimately decides to use a reverse auction mechanism, then it should not compare auction bids across all geographic areas of the country, and it should not adopt its proposal to limit auction winners to only one provider in each eligible service area.

U.S. Cellular also explains that an economic cost model would work more effectively than a reverse auction mechanism in disbursing Mobility Fund Phase II support, in meeting the Commission's goals and objectives for the deployment of mobile broadband, and in serving consumers in rural areas. U.S. Cellular also provides specific examples of how the Commission should follow pro-competitive and pro-consumer policies in designing eligible areas of support for Phase II, and in establishing public interest obligations. Finally, U.S. Cellular addresses in the following sections several additional issues raised by the Commission regarding its rules and policies for Phase II.

A. The Commission Should Evaluate the Operation of the Mobility Fund Phase I Reverse Auction Mechanism Before Adopting Any Disbursement Mechanism for Phase II.

A major difficulty faced by the Commission in its consideration of possible disbursement mechanisms for Phase II support is the fact that the use of reverse auctions for such disbursement is completely untested, and, in U.S. Cellular's view, "there is no basis for concluding that the Commission's proposed gamble in relying on reverse auctions as a cornerstone of its universal service reform would be successful."[3] One means of addressing this risk would be for the Commission to make an informed decision regarding the use of a reverse auction mechanism for Phase II based on the experience gained through its use of such a mechanism for disbursing Mobility Fund Phase I support.

Unfortunately, the Commission has announced a rigorous decision-making and implementation timetable for Phase II, and has not made clear how it could effectively consider the results from the Mobility Fund Phase I auction, as a means of assessing the advisability of relying on a reverse auction mechanism for the second phase of the Mobility Fund, in light of this timetable.

Although the Commission indicates its intention "to take into account our experience implementing Mobility Fund Phase I to ascertain whether there are ways to further minimize overlap [among service providers in a given geographic area] during the implementation of Mobility

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[3] U.S. Cellular *USF-ICC Reform NPRM* Comments at 31.

Fund Phase II[,]"[4] the Commission does not appear to make a general commitment to review its Phase I reverse auction experience as part of making a decision regarding the Phase II disbursement mechanism.

This conclusion is bolstered by the decision-making and implementation timetable the Commission intends to follow. Specifically, the Commission has stated that it plans to conduct the Mobility Fund Phase I reverse auction in the third quarter of 2012, and that it plans to adopt its Mobility Fund Phase II mechanism before the end of 2012 (with implementation in 2013).[5] By any measure, this seems to leave a very narrow window (if any window at all) for the Commission to gather data regarding Phase I implementation, provide for public comment on the data (which would be a critical step), and make a decision concerning whether to use reverse auctions or a cost model in Phase II.

The approach and timetable contemplated by the Commission, in addition to creating the impression that the Commission may have prejudged the outcome of its proposals for Mobility Fund Phase II disbursement mechanisms, also signals that the Commission may be content with foregoing an opportunity for data-driven decision-making with respect to the adoption of these mechanisms.

Fortunately, there is a solution to this dilemma: The Commission should modify its timetable for Mobility Fund Phase II implementation so that the Commission gives itself (and interested parties) ample opportunity to evaluate the extent to which the single-winner reverse auction mechanism adopted by the Commission as the Phase I disbursement mechanism has been effec-

[4] *Further Notice* at para. 1136.

[5] *Order* at para. 28

tive in meeting the Commission's objectives and serving the four principles that have guided the Universal Service Fund ("USF") and ICC reform process.[6]

As U.S. Cellular explains,[7] and as numerous commenters have argued throughout the various stages of this proceeding, there is considerable risk that the use of a single-winner reverse auction mechanism to disburse Mobility Fund support would cause a host of problems (*e.g.*, a single-winner reverse auction would not serve the interests of rural consumers, would harm competition, would erode the quality of voice and broadband services, would require the erection of formidable regulatory regime, and would not necessarily result in reducing the level of Mobility Fund support, which seems to be a central driver of the Commission's mobile broadband funding policies).

By pausing its decision-making process regarding Mobility Fund Phase II until the results from the use of the Phase I reverse auction mechanism are available, the Commission could accumulate and evaluate empirical evidence regarding whether the concerns voiced by U.S. Cellular and other interested parties have materialized. This would be a prudent step, and U.S. Cellular urges the Commission to take it.

B. Any Mobility Fund Phase II Reverse Auction Mechanism Used By the Commission Should Not Compare Bids Across All Geographic Areas.

If the Commission selects reverse auctions as the mechanism for disbursing Mobility Fund Phase II support, then a critical question involves the manner in which competing bids will be compared for purposes of selecting auction winners and allocating support. In the *USF-ICC*

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[6] *See id.* at para. 11.

[7] See Sections II.C.2. and II.D., *infra*.

Reform NPRM, the Commission proposed to determine winning bidders in reverse auctions through the following mechanism:

> All bids, across all areas, would be compared against all other bids, and would be ordered from lowest-price-per-unit bid to highest. . . . Support would be allocated first to the bidder making the lowest (adjusted) per-unit bid, and then to bidders with the next lowest per-unit bids in turn, until the running sum of support funds for the winning bidders exhausted the money available in the CAF.[8]

U.S. Cellular opposed this approach at the time it was initially proposed in the *USF-ICC Reform NPRM*,[9] and renews its opposition now, in the context of the Commission's consideration of a reverse auction mechanism for Phase II of the Mobility Fund.

A central difficulty with the Commission's proposal is that it would virtually guarantee that areas with lower unit costs would receive the bulk of Mobility Fund Phase II support, while eligible service areas with higher unit costs would face the prospect of being frozen out of any Phase II funding. NASUCA has explained the problem:

> The Commission must recognize that this auction approach is not an "auction" at all. Rather, the method simply groups projects in different geographic areas from least to most expensive, and will draw a cut-off line based on the amount of funds that are available. As a result, the relationship between the outcome and economic efficiency is unknown. It is possible that "low cost" but economically inefficient projects will trump "high cost" but economically efficient projects. Because there is no bidding competition on any specific geographic area, the Commission will

[8] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4649-50 (para. 286) (footnote omitted). This mechanism would apply if no more than one bid covers the same geographic area. *Id*. The Commission also sought comment on its proposal to allocate support by comparing all bids across all areas, rather than comparing those bids within certain subsets of otherwise eligible geographic areas. *Id*. at 4650 (para. 287). *See Mobility Fund NPRM*, 25 FCC Rcd at 14723-24 (para. 18) (proposing a similar mechanism). The Commission is proposing a similar approach for its proposed Remote Areas Fund, suggesting that "[u]sing an auction in which *providers compete across areas for support* from the Remote Areas Fund could enable us to identify those providers that would *offer the services at least cost to the fund*, so as to maximize the number of locations that could be served within the budget." *Further Notice* at para. 1276 (emphasis added).

[9] *See* U.S. Cellular *USF-ICC Reform NPRM* Reply at 42-43.

> be left taking the applicant's word that their project is a good one relative to other projects.[10]

In fact, entire states with high-cost but economically efficient projects in eligible service areas could be left with no Phase II support at all. If a state has eligible areas with comparatively high costs, and if bids reflect those costs, then these bids would be at the high end of the bid-ranking process the Commission proposes to follow. As a result, the running sum of support for winning bidders would likely exhaust the money available in Mobility Fund Phase II before any bidders seeking to provide service in the high-cost state could "win" any support.

Under the Commission's proposed approach, a worst case scenario would be one in which (a) the Commission conducts only one Phase II auction; (b) the auction compares all bids, across all areas, against all other bids; and (c) auction winners are awarded support for a fixed term of 10 years.[11] Under this scenario, entire states with high-cost eligible service areas could be shut off from any access to Mobility Fund Phase II funding for a decade.

This would not be sound public policy. As the Commission has pointed out, "as many as 24 million Americans—one in thirteen of us—live in areas where there is no access to any broadband network, fixed . . . or mobile."[12] In committing itself to overhaul universal service support mechanisms, the Commission observed that:

> There are unserved areas *<u>in every state of the nation and its territories</u>*, and in many of these areas there is little reason to believe that Congress's desire "to ensure that all people of the United States have access to broadband capability" will be met any time soon if current policies are not reformed.[13]

[10] National Association of State Utility Consumer Advocates ("NASUCA") *USF-ICC Reform NPRM* Comments at 59, *cited in* U.S. Cellular *USF-ICC Reform NPRM* Reply at 43.

[11] While U.S. Cellular supports a 10-year term, see Section II.G.3., *infra*, it also recognizes that such a term for support could compound the ill effects of the Commission's bid comparison proposal.

[12] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4558 (para. 5) (footnote omitted).

[13] *Id*. at 4559 (para 5) (emphasis added).

The Commission's proposal to compare all bids, across all areas, in awarding support contradicts its commitment to reform, since it would threaten to close the door on any Mobility Fund Phase II support for some states.

Moreover, the Commission's suggested approach of comparing all bids across all geographical areas would not comply with the statutory mandates that "[t]here should be . . . sufficient Federal . . . mechanisms to preserve and advance universal service[,]"[14] and that:

> Consumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[15]

If eligible service areas across entire states receive no Mobility Fund support—which U.S. Cellular has demonstrated is a threatened result of the Commission's proposal—the support mechanism could not possibly be considered sufficient to "preserve and advance" universal service in those areas, nor could it be viewed as promoting the availability of reasonably comparable mobile broadband service for rural consumers.

New Hampshire and West Virginia illustrate the threat of such an outcome. If road miles are used as the units upon which bids would be evaluated and support would be disbursed,[16] then service areas in New Hampshire and West Virginia are likely to have high per-unit costs, because there are likely to be relatively fewer road miles in these service areas, and, because of factors such as terrain, the costs of deploying high-speed mobile broadband networks are likely to be higher. In other areas of the country (*e.g*, states in the western region of the country, where there are a relatively larger numbers of road miles, and, because of factors such as terrain, dep-

[14] 47 U.S.C. § 254(b)(5).

[15] 47 U.S.C. § 254(b)(3).

[16] *See Further Notice* at para. 1122.

loyment costs are likely to be relatively lower than in other areas of the country), per-unit costs are likely to be lower.

Thus, even though New Hampshire and West Virginia have high-cost areas that, under any reasonable test, should be eligible for, and should receive, universal service support, these states would be at a severe disadvantage in competing against western states for Mobility Fund Phase II support. This result would be the product of the Commission's proposal to allocate support "first to the bidder making the lowest (adjusted) per-unit bid, and then to bidders with the next lowest per-unit bids in turn . . . ."[17]

In U.S. Cellular's view, it would be a mistake for the Commission to devise a bid comparison mechanism that would have the built-in effect of excluding entire areas of the country from any realistic opportunity to compete for Mobility Fund Phase II support. As U.S. Cellular has noted, such an outcome would not be consistent with the statutory principle that "[t]here should be . . . sufficient Federal and State mechanisms to preserve and advance universal service"[18] or with the statutory commitment to make communications services "available, so far as possible, to all the people of the United States . . . ."[19]

If the Commission is faced with situations in which there is not more than one bid covering the same geographic area, then, as a possible alternative to comparing all bids across all geographic areas, the Commission could "just compare[e] those [bids] within certain subsets of otherwise eligible geographic areas."[20] One approach would be to compare all bids within the same state, instead of comparing all bids across the entire country. Such an approach, while not ideal

[17] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4650 (para. 286).

[18] 47 U.S.C. § 254(b)(5).

[19] 47 U.S.C. § 151.

in ensuring that the most economically efficient bids are identified, would still help to avoid auction outcomes in which no state receives any Phase II support.

If the Commission decides to use a mobile wireless cost model to identify areas that would be eligible for Phase II support, while generally using a reverse auction mechanism to actually award support,[21] then another alternative would be to use the reverse auction mechanism only in cases in which there are competing bids covering the same geographic area, but to use the cost model—instead of the reverse auction—to award Phase II support in areas in which there are no competing bids.

C. A Cost Model Based-Approach Would Work Better Than Reverse Auctions in Meeting the Commission's Mobility Fund Phase II Objectives.

The Commission proposes to use a reverse auction mechanism to disburse Mobility Fund Phase II support,[22] but also indicates that it "could determine support using a model that estimates the costs associated with meeting public interest obligations, as well as a provider's likely revenues from doing so."[23] The Commission advises that "commenters advocating for a model should address why a model-based approach would better serve this purpose than our [reverse auction] proposal . . . ."[24]

In the following sections U.S. Cellular explains that using a forward-looking economic cost model to disburse Mobility Fund Phase II support would work effectively in enabling the Commission to direct support, in a manner consistent with the Commission's principle of fiscal

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[20] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4650 (para. 287).

[21] *See Further Notice* at para. 1125. See discussion in Section II.E., *infra*.

[22] *Further Notice* at para. 1122.

[23] *Id*. at para. 1174.

[24] *Id*.

responsibility, to bring high-speed broadband service to dead zones that lack access to high-speed broadband. In addition, U.S. Cellular demonstrates that using a reverse auction mechanism would result in the perpetuation of the two flawed assumptions that deserve no place in the Commission's policymaking calculus.

1. A Properly Designed Cost Model Would Enable Effective Deployment of Mobile Broadband Services in a Fiscally Responsible Manner.

The Commission has concluded that "in the long run, forward-looking economic cost *best approximates* the costs that would be incurred by an efficient carrier in the market."[25] U.S. Cellular urges the Commission to return to this assessment of the most effective means for disbursing universal service support. As U.S. Cellular discusses in more detail in the following section, reverse auctions are intended to drive down support to the lowest levels possible, risking results that would be detrimental to rural consumers. It makes more sense—and it would better serve rural consumers—to disburse support in a manner that ensures it will be used *efficiently*, since this avoids the risk that low-bid reverse auction winners will be left with insufficient support to accomplish the Commission's mobile broadband deployment objectives.

Before turning to the advantages of cost models, U.S. Cellular also points out that, in its view, the Commission should select a cost model as the Mobility Fund Phase II disbursement mechanism regardless of whether the Commission decides to provide support only to a single provider, or to multiple providers, in a given eligible service area. The key task for the Commission is identifying and utilizing a disbursement mechanism that ensures a sufficient level of funding. A cost model meets this test. A reverse auction does not.

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[25] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8899 (para. 224) (1997) ("*Universal Service First Report and Order*") (subsequent history omitted) (emphasis added).

For this reason, the Commission's decision regarding whether to use a cost model should not be driven by the Commission's choice regarding whether there will be a single funding recipient or multiple recipients in a given eligible service area. While U.S. Cellular strongly opposes limiting Mobility Fund support to a single provider in a service area,[26] U.S. Cellular also is convinced that a cost model would work effectively as the disbursement mechanism even if the Commission were to impose a single-recipient limitation.

The Commission has suggested ways its principle of "offer[ing] support to only one mobile services provider in an area" could be implemented under a model-based approach.[27] Specifically, the Commission suggests that it could determine the party that receives support through a qualitative review of would-be providers. Alternatively, the Commission could "reserve support for a particular area to the provider currently receiving universal service support that has the most extensive network within a defined area . . . ."[28] U.S. Cellular believes that these approaches are worthy of consideration, and intends to address them, along with other possible mechanisms, in its Reply Comments as part of its discussion of the U.S. Cellular Mobility Model.[29]

U.S. Cellular now turns to the several advantages offered by a cost model used as a mechanism for disbursing Mobility Fund Phase II support. These advantages include:

■ A cost model promotes fiscal responsibility. It defines the level of support necessary to deploy and provide mobile broadband services in eligible service areas, and potential market en-

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[26] See Section II.D., *infra*.

[27] *Further Notice* at para. 1186.

[28] *Id*.

[29] The Commission has asked for comment regarding the U.S. Cellular Mobility Model proposed by U.S. Cellular as a mechanism for disbursing Mobility Fund support. *See id.* at paras. 1125, 1176-1188. U.S. Cellular intends to address comments regarding its Mobility Model, as well as the questions and issues

trants have the option of competing for this support. The cost model in effect operates as a cap on the level of support. As U.S. Cellular has explained, "[o]nce an amount of support is determined to be sufficient to provide the supported services to an area, it matters not how many market participants enter, as long as all carriers are required to provide service to all requesting customers . . . ."[30]

■ Use of a cost model is an effective means of creating incentives for investment in mobile broadband deployment. The cost model establishes a fixed level of support for eligible service areas, which in turn creates market certainty by furnishing relevant information to potential market entrants, and also encourages entry by efficient carriers, thereby benefiting consumers.

■ A cost model encourages the efficient use of Mobility Fund Phase II support. As the Commission has explained:

> [T]he use of forward-looking economic cost will lead to support mechanisms that will ensure that universal service support corresponds to the cost of providing the supported services, and thus, will preserve and advance universal service and encourage efficiency because support levels will be based on the costs of an efficient carrier.[31]

■ A cost model can be adjusted to address changing circumstances. If carriers do not enter a particular eligible service area, the model can be adjusted upward. On the other hand, if there is evidence that support levels are too high, the model can be adjusted downward. As U.S.

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raised by the Commission in the *Further Notice* concerning the Mobility Model, in U.S. Cellular's Reply Comments in this proceeding.

[30] U.S. Cellular *CAF NOI/NPRM* Comments at 20.

[31] *Universal Service First Report and Order*, 12 FCC Rcd at 8899 (para. 225), *quoted in* U.S. Cellular *USF-ICC Reform NPRM* Comments at 40.

Cellular has explained, "[a] model can determine support on a 'per-line,' 'per-minute' or 'per megabyte' basis, depending upon how policymakers choose to provide support."[32]

■ A cost model operates in a manner that is competitively and technologically neutral, consistent with the Commission's longstanding principle.[33] U.S. Cellular has previously explained that "a cost model reduces the possibility of anti-competitive conduct, by fixing an amount of support that *only goes to carriers that get customers*. A model confers no special advantage on any class of carrier or technology."[34]

2. A Reverse Auction Mechanism Would Not Be as Effective as a Cost Model in Achieving the Commission's Purposes for Mobile Broadband Deployment.

Although the Commission makes a passing attempt in the *Order* to defend its decision to use a reverse auction mechanism for disbursing Mobility Fund Phase I support,[35] it also leaves its choice of a Phase II mechanism as an open question, asking for comment on whether it should use a cost model instead of a reverse auction mechanism.[36] The Commission is wise to keep the issue open, given the numerous disadvantages of the reverse auction methodology.

The fundamental premise of reverse auctions is inherently bad for rural consumers: Reverse auctions are designed to drive down costs. While this may serve the Commission's prin-

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[32] U.S. Cellular *CAF NOI/NPRM* Comments at 19.

[33] In 1997, the Commission established the principle that "universal service mechanisms and rules" should "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another." *Universal Service First Report and Order,* 12 FCC Rcd at 8801 (para. 47).

[34] U.S. Cellular *Mobility Fund NPRM* Comments at 26 (internal quotation marks omitted) (emphasis added). Thus, model-based funding is fully portable, consistent with judicial findings that the Act mandates portability. *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) ("*Alenco*"). The statutory mandate requiring portability is discussed in more detail in Section II.D., *infra*.

[35] *See Order* at paras. 323-328.

[36] *Further Notice* at para. 1174.

ciple of fiscal responsibility, such an approach cannot escape the fact is that you get what you pay for. The reverse auction mechanism, in forcing rural consumers to deal with the lowest bidder, would create a significant risk that these consumers would be short-changed with regard to rates, service quality, and the extent of deployment.

U.S. Cellular understands that the statutory principle of rate and service comparability[37] is intended to protect rural consumers from these adverse outcomes. But this statutory protection would be undermined if the Commission manufactures—through a reverse auction mechanism—circumstances in which low-bidding auction winners have strong incentives to cut corners regarding service quality and network deployment, and to recoup diminished levels of support through increased rates in rural areas.

In addition to this fundamental problem with reverse auctions, the mechanism is riddled with other disadvantages:[38]

- Reverse auctions would hamper carriers' access to private investment to support broadband deployment, due to the inherent unpredictability of the reverse auction process.

- Reverse auctions provide incentives for anti-competitive conduct. For example, an auction participant may have a financial incentive to win an auction at a price that would not generate a positive return, if this strategy would provide the carrier with an offsetting benefit of reduc-

[37] *See* 47 U.S.C. § 254(b)(3).

[38] These paragraphs summarize issues and concerns that U.S. Cellular has previously presented in this rulemaking proceeding and other related proceedings. *See*, *e.g.*, U.S. Cellular *USF-ICC Reform NPRM* Comments at 30-34. In addition to the deficiencies of reverse auctions discussed in this section, U.S. Cellular also explains in subsequent sections of these Comments that the Commission would be ill-advised to restrict Mobility Fund Phase II or CAF Phase II support to a single recipient in each eligible service area. See Sections II.D. and III.A., *infra*.

ing its contribution obligation into the Universal Service Fund ("USF"), or would eliminate support for competitors and thus improve the carrier's market position.[39]

■ Reverse auctions would harm consumers in rural areas by reducing their access to advanced broadband technologies, as well as reducing their choices among mobile services.

■ Any reduction in the overall size of Mobility Fund Phase II support mechanisms that would purportedly be produced by the use of reverse auctions would be offset by the regulatory costs that would be imposed on both the Commission and auction winners by reverse auctions.

Finally, a further problem with the Commission's proposed reverse auction approach, especially when combined with the Commission's imposition of budgetary limitations, is that the Commission's preference for reverse auctions seems to be driven by two flawed assumptions: ***First***, if there is some mobile broadband service being provided in some rural areas, then the Commission has done a satisfactory job for rural America. And, ***second***, because of funding constraints and the need for fiscal responsibility, the Commission cannot do any better than bringing some mobile broadband to some rural areas.

Given consumer demand for mobile broadband services, as well as the commitment of the Obama Administration to achieve virtually ubiquitous deployment of high-speed mobile broadband services,[40] the Commission should revisit its approach with the objective of solving this problem: How can the Commission ensure that support is available to "fill in the holes" in the availability of mobile broadband services?

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[39] *See* Christian Jaag & Urs Trinkner, "Tendering Universal Service Obligations in Liberalized Network Industries," Swiss Economics Working Paper 0013 (Jan. 2009), at 12, 17-18, accessed at http://ideas.repec.org/p/chc/wpaper/0013.html, *cited in* U.S. Cellular *USF-ICC Reform NPRM* Comments at 32 n.81 (winners of reverse auctions have an incentive to engage in "strategic underinvestment" as a means of maximizing profits).

In broad terms, this problem can be solved through Commission policies that revisit the mismatch in funding allocations between wireline and wireless ETCs, that finally move forward with universal service contribution reform, that are not wedded to the use of reverse auctions as a means of driving down the overall level of support, and that do not restrict overall budgeting for universal service support in a manner that closes off support to many areas that have insufficient access to high-speed mobile broadband. In U.S. Cellular's view, the Commission can do better in designing support mechanisms that serve consumers throughout rural America by bringing them access to high-speed mobile broadband networks. A reverse auction offers little prospect of meeting this goal.

D. If the Commission Adopts a Reverse Auction Mechanism, It Should Maximize Consumer Benefits by Supporting More Than a Single Provider in Each Service Area.

The Commission indicates that it "expect[s] that . . . we will generally be supporting a single provider for a given geographic area" in Mobility Fund Phase II.[41] Such an approach would not serve the interests of rural consumers, and U.S. Cellular urges the Commission to take a different course.

U.S. Cellular acknowledges that some may consider this issue of the number of providers to be funded in each service area in Phase II to be closed, given the Commission's conclusion in the *Order* that, "as a general matter, the Commission should not award Mobility Fund Phase I support to more than one provider per area . . . ."[42] U.S. Cellular is of the view, however, that the reasons for the Commission's decision regarding Phase I do not compel any particular outcome

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[40] *See*, *e.g.*, President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Michigan (Feb. 10, 2011) ("Obama Remarks").

[41] *Further Notice* at para. 1136.

[42] *Order* at para. 316.

regarding Phase II, and, in any event, since the Commission has sought comment on this issue in the *Further Notice*,[43] U.S. Cellular is confident that the Commission is treating the matter as an open question, as it should.[44]

The Commission hinges its decision in the *Order* limiting Phase I funding to a single provider on its disagreement with the view it ascribes to many commenters, that permitting support for multiple providers in one area is "the *only* way to fulfill the goals of the statute."[45] The Commission, however, has its eye on the wrong ball: The real issue is whether limiting support

[43] *Further Notice* at para. 1136 ("invit[ing] comment on this approach," *i.e*., all the proposals made in paragraph 1136, including the Commission's expectations regarding limiting support to a single provider in each service area).

[44] Given the fact that Phase I of the Mobility Fund involves a limited budget of "up to $300 million in *one-time support to immediately accelerate deployment* of networks for mobile voice and broadband services in unserved areas[,]"*Order* at para. 28 (emphasis added), the Commission apparently decided (wrongly, in U.S. Cellular's view) that limiting support to a single provider in each service area would help facilitate a one-time, rapid boost in funding to further the Commission's goal of ensuring that universal service funding "is cost-effective and targeted to areas that require public funding to receive the benefits of mobility." *Id*. at para. 298.

Phase II of the Mobility Fund differs from Phase I, in that it does not involve a one-time injection of a limited level of support that the Commission intends to accomplish on an expedited basis. While this "interim" funding effort, in the Commission's view, apparently can accommodate the relaxation of the Commission's pro-competitive policies, U.S. Cellular urges the Commission to examine closely the arguments in favor of awarding Mobility Fund Phase II support to more than one carrier in each eligible service area.

In this regard, the Commission's treatment of its "state-level commitment" procedure provides analogous support for U.S. Cellular's view that the Commission's decision to limit Phase I support to a single provider in each service area has no dispositive effect on the approach to be taken in Phase II. The Commission emphasizes in the *Order* that the state-level commitment procedure (which U.S. Cellular opposes) is limited in scope and duration, and notes that the procedure will be replaced by a reverse auction process in five years, leading the Commission to "anticipate that funding will soon be allocated on a fully competitive basis." *Id*. at para. 178. Although U.S. Cellular disagrees with the assertion that the reverse auction process is "fully competitive," the Commission's approach to its state-level commitment policy lends support to the view that the Commission is open (as it should be) to proposals to replace the monopolistic single-winner disbursement mechanism used in Phase I of the Mobility Fund with a more competitive multiple-winner mechanism in Phase II.

[45] *Id*. at para. 318 (emphasis added).

to a single provider impermissibly ignores the goals of the Communications Act of 1934 ("Act") and the Telecommunications Act of 1996 ("1996 Act'). The unavoidable answer is that it does.

In defending its decision to limit support to a single provider, the Commission embraces the view expressed by Verizon that "the statute's goal is to expand availability of service to users."[46] This view does not accurately reflect statutory goals and mandates. As U.S. Cellular has previously explained, any restriction of universal service support to a single provider in a service area cannot be squared with the judicial interpretation that USF support mechanisms, *in order to comply with the statute*, must not only be sufficient to preserve and advance universal service, but also must be competitively neutral.[47] The Fifth Circuit made this clear more than a decade ago:

> The [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.[48]

The Commission cannot escape the fact that a single-winner reverse auction mechanism, by its very nature, is not competitively neutral because, instead of encouraging competitive entry and natural price competition, a single-winner reverse auction mechanism installs a government-selected monopoly service provider in each geographic service area.

In the *Order*, the Commission acknowledges that commenters oppose the single-winner action approach because "it would unfairly deprive customers of the benefits of competition

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[46] *Id*. (footnote omitted) (citing Verizon *Mobility Fund NPRM* Reply at 10).

[47] U.S. Cellular *USF-ICC Reform NPRM* Comments at 75-76.

[48] *Alenco*, 201 F.3d at 616 (emphasis added).

[and] create barriers to entry . . . ."[49] The Commission makes virtually no attempt to justify its rejection of these concerns. In another context, the Commission attempts to defend its state-level commitment process by arguing that it is competitively neutral because it does not treat competitors differently in "unfair" ways.[50] The Commission's argument is unpersuasive in the context of the state-level commitment procedure, and is entirely unconvincing here. Providing a single carrier with sole access to Mobility Fund support, to the exclusion and detriment of potential competitors, can hardly be considered a fair differentiation among carriers. Moreover, in any event, it cannot be considered a mechanism that adheres to the statutory mandate of promoting competition and competitive entry in local exchange markets.

The Commission notes in passing that it has adopted requirements and conditions (*i.e.*, collocation, data roaming, and rate comparability obligations) that it optimistically concludes "should help address the concerns of those that argue for continued support of multiple providers in a particular geographic area . . . ."[51] The Commission provides no support for its optimism, and the fact is that, while U.S. Cellular supports the imposition of these obligations, their effectiveness in benefiting consumers and promoting competition is significantly undercut by a policy that crowns a monopoly provider in each service area and walls off potential competitors from any Mobility Fund support.[52]

The Commission also attempts to deflect criticism of its "single winner" approach by asserting the authority to overturn its earlier commitment to portability, claiming that competition should not be subsidized in areas "challenging for even one provider to serve[,]" alluding to bud-

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[49] *Order* at para. 317 (footnote omitted).

[50] *Id*. at para. 176 (quoting *Rural Cellular Ass'n v. FCC,* 588 F.3d 1095, 1104 (D.C. Cir. 2009)).

[51] *Id*. at para. 320.

getary constraints, and concluding that the public interest is best served by limiting support to a single provider.[53] The Commission overlooks the fact that the portability of universal service funding is not a matter of its discretion but, according to the *Alenco* court, is a statutory requirement.

Moreover, a properly designed portability mechanism would ensure that funding goes to the carrier that gets the customer, which means that Mobility Fund support would be "subsidizing" the most efficient competitive entrant. Portable funding that flows to the carrier that gets the customer also addresses the Commission's concerns regarding the limits of its available budget, since the overall level of funding would remain the same regardless of the number of competitive entrants in a given eligible service area. Given these considerations, the Commission's public interest findings lack any reasonable basis—the better analysis is that portability is not only mandated by the statute but also serves the public interest (and rural consumers) by ensuring the efficient use of Mobility Fund support.

Finally, as U.S. Cellular has previously explained, the use of a single-winner reverse auction would require the Commission:

> to police the carrier's rates and service, to ensure comparability with rates and services in urban areas. The Commission would also be required to monitor and regulate the quality of service delivered by the auction winner to its subscribers, since there would be no competitive marketplace capable of disciplining the carrier's conduct.[54]

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[52] U.S. Cellular discusses this issue further in Section II.F.2., *infra*.

[53] *Order* at para. 319.

[54] U.S. Cellular *USF-ICC Reform NPRM* Comments at 31 (footnote omitted).

Although the Commission expresses confidence that these problems could be addressed by "clear performance standards and effective enforcement of those standards[,]"[55] the Commission spends little time discussing the basis for its confidence and, in any event, it would be more efficient to permit competitive markets to police funding recipients' performance, rather than relying on the expenditure of limited regulatory resources.

E. The Commission Should Return to Its Pro-Competitive and Pro-Consumer Policies in Designing Areas Eligible for Support.

***Identifying Eligible Areas for Support.*—**The Commission proposes to identify areas eligible for Phase II support on a census block basis.[56] U.S. Cellular is concerned that the Commission's approach could contradict Section 214(e)(5) of the Act,[57] which provides that, in the case of areas served by rural telephone companies, the area to be used for purposes of providing universal service support must be the rural telephone company's study area, unless the Commission *and the states* agree to "establish a different definition of service area for such company."[58]

If the Commission seeks to disburse support based on census blocks, then census blocks would first need to be defined as "service areas" pursuant to the requirements of Section 214(e), and the Commission has not undertaken any such joint exercise with the states to do so.[59] The

[55] *Order* at para. 325.

[56] *Further Notice* at para. 1124.

[57] 47 U.S.C. § 214(e)(5).

[58] *Id*. The Commission has forborne from the Section 214(e)(5) requirement that the service area of a competitive ETC must conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as a Lifeline-only ETC. *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc., Petition for Forbearance*, WCB Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011).

[59] *See* U.S. Cellular *USF-ICC Reform NPRM* Comments at 27.

Commission should retain the current service area definition, unless it is changed pursuant to the Section 214 process.

***The Centroid Method*.—**For purposes of determining whether particular areas are eligible for Mobility Fund Phase II support, the Commission proposes to use the centroid method to establish whether service using particular technologies is available to a particular census block.[60]

U.S. Cellular opposes this approach. While it may be "relatively simple and straightforward,"[61] it is not a useful or effective tool for promoting the deployment of 4G mobile broadband services in rural areas. The Commission itself acknowledges that a disadvantage of the centroid method is its propensity to incorrectly treat large census blocks in low-density rural areas as "served" even though large portions of the blocks are not receiving a level of mobile broadband service that is reasonably comparable to that which is available in urban areas, which is the statutory principle the Commission is required to pursue.[62]

Instead of focusing on ways to reduce the level of disbursements from the Mobility Fund (which would be the result of employing the centroid method), the Commission's policies should seek to find ways to ensure that consumers throughout all portions of a service area are provided with access to 4G mobile broadband, in a manner comparable to the availability of 4G broadband in urban areas.

***Prioritizing Areas*.—**The Commission seeks comment on whether it should target areas currently without any mobile service (or only mobile service at speeds lower than current genera-

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[60] *Further Notice* at para. 1124. The Commission explains that the "centroid" is "the internal point latitude/longitude of a census block polygon[,]" *Order* at para. 343 n.576, otherwise described as the "geometric center of the block . . . ." *Id.* at para. 343.

[61] *Order* at para. 344.

[62] *See id.*; 47 U.S.C. 254(b)(3).

tion or 3G levels) for priority treatment under Phase II of the Mobility Fund.[63] U.S. Cellular does not agree with such an approach because it would detract from an overall goal that U.S. Cellular considers to be important and based in the statute, namely, using support to ensure rate and service comparability between urban and rural areas.

U.S. Cellular favors using a cost model to disburse Phase II support to eligible service areas without giving any priority to any particular service areas based on their current level of service. Each eligible service area should be treated the same for purposes of disbursing support. Assuming that eligible service areas that currently have no mobile service (or only service at slower speeds) are areas with higher costs, giving priority to these areas would be problematic from a budgetary perspective.

Although U.S. Cellular opposes any mechanism that could block these higher-cost areas from receiving any Phase II support,[64] U.S. Cellular is also concerned that giving priority to these higher-cost areas would rapidly deplete the Commission's limited Phase II budget, eliminating support for carriers seeking to serve other eligible areas. Without access to Phase II support, these other areas would likely be deprived of mobile broadband services that are reasonably comparable to those available in urban areas. In U.S. Cellular's view, the Commission's self-imposed budget constraints create a serious dilemma with regard to meeting the statutory principle of reasonable comparability,[65] and, given these constraints, there is no rational basis for establishing the priority suggested by the Commission. Rather than tinkering with disbursement

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[63] *Further Notice* at para. 1132.

[64] See the discussion in Section II.B., *supra*.

[65] 47 U.S.C. § 254(b)(3).

priorities, the Commission would better serve consumers in rural areas by establishing a Phase II budget sufficient to ensure rate and service comparability across all eligible service areas.

***Areas with Unsubsidized Competitors*.—**The Commission proposes that any census block where 3G or better service is available from at least one unsubsidized provider would not be eligible for Mobility Fund Phase II support.[66] U.S. Cellular opposes the Commission's proposal to use the availability of *3G broadband service* from unsubsidized competitors as the trigger for cutting off any Mobility Fund Phase II support in a service area. Although this proposal may serve the Commission's apparent goal of restricting its Mobility Fund budget as much as possible, the fact is that consumers in rural areas would be short-changed by the Commission's proposed approach.

The likely result of the Commission's proposal would be that the deployment of *4G broadband service* in some rural areas would be delayed or would not occur at all, since Phase II support would be cut off even though 4G broadband service is not available in the service area involved. Adopting such a proposal would not only ignore consumer preferences and the Obama Administration's mandate for the deployment of high-speed mobile broadband, but would also install a universal service funding policy in conflict with the service comparability principle enacted by Congress.

As U.S. Cellular has suggested, the Commission's policies should focus on filling holes in coverage and improving service quality by supporting the deployment of 4 G mobile broadband service. The proposal to use 3G service as the trigger for blocking Mobility Fund Phase II support should not be adopted because it would contradict these policies.

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[66] *Further Notice* at para. 1124.

***Limited Use of a Cost Model*.—**The Commission seeks comment on the possibility of using a mobile wireless cost model _only_ to identify areas that would be eligible for Phase II support, while using a reverse auction mechanism to actually award support.[67] As U.S. Cellular has explained, it strongly favors the use of a cost model both to determine an efficient carrier's costs and to disburse Phase II support.[68]

The U.S. Cellular Mobility Model has been designed in a manner that would be effective in producing funding disbursements that are fully portable and that maximize the reach of mobile broadband services supported with the Commission's budget in areas where there is no private sector business case for providing such services. Nonetheless, if the Commission were to select a reverse auction mechanism for Phase II, then U.S. Cellular would favor the use of a cost model, in conjunction with the reverse auction mechanism, to identify eligible service areas because a cost model would be capable of providing an accurate evaluation of areas with high costs.

F. The Commission Should Establish Public Interest Obligations That Promote Consumer Interests and Pro-Competitive Policies, and That Avoid Unnecessary Burdens on Funding Recipients.

In the following sections, U.S. Cellular argues that that the Commission should adopt a mobile broadband speed threshold of 768 kbps downstream and 200 kbps upstream, and that, while U.S. Cellular supports the establishment of collocation and roaming obligations applicable to Mobility Fund Phase II support recipients, these obligations are not a sufficient antidote for Phase II mechanisms proposed by the Commission that would be anti-competitive and harmful to consumers.

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[67] *Id*. at para. 1125.

[68] See Section II.C.1, *supra*.

1. The Commission Should Adopt Its Proposed Minimum Bandwidth Requirements for Services Receiving Mobility Fund Phase II Support.

The Commission proposes that Mobility Fund Phase II support recipients should be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream.[69] U.S. Cellular supports this approach.

The Commission explains that signal coverage meeting the 4G standard, with speeds of 768 kbps downstream and 200 kbps upstream, "will produce substantially faster speeds under conditions closer to the base station, very often exceeding the 4 Mbps downstream and 1Mbps upstream that have been proposed as minimum speeds for fixed broadband."[70]

U.S. Cellular supported the use of a 4 Mbps downstream and 1Mbps upstream minimum speed threshold for fixed broadband,[71] and also suggested that a separate metric should be established for mobile broadband services.[72] Such a speed threshold, however, would not be a realistic near-term objective for mobile broadband, nor is such a threshold necessary to serve the interests of rural consumers.

Consumers would benefit from the proposed 768 kbps downstream and 200 kbps upstream speed threshold because, as the Commission has explained, this standard would result in

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[69] *Further Notice* at para. 1142. The Commission notes that these data rates should be achievable in both fixed and mobile conditions, and at vehicle speeds "consistent with typical vehicle speeds on the roads covered." *Id*.

[70] *Order* at para. 362.

[71] U.S. Cellular argued that setting the fixed broadband threshold lower than 4 Mbps downstream and 1 Mbps upstream:

> would not be an effective step in the direction of fulfilling President Obama's goals for the deployment of advanced broadband networks, including mobile broadband, nor would it . . . contribute to efforts to ensure that universal service support is used to assist the deployment of networks in rural and high-cost areas that are able to provide broadband Internet access at speeds comparable to those available to consumers in urban areas.

U.S. Cellular *USF-ICC Reform NPRM* Comments at 45.

the provision of actual speeds at or above 4 Mbps downstream and 1Mbps upstream in many cases. On the other hand, any attempt by the Commission to go further, by imposing a 4 Mbps downstream and 1Mbps upstream speed requirement out to the edge of mobile broadband networks, would be difficult to accomplish in the near term and would significantly drive up the cost of network deployment.

2. The Proposed Collocation and Roaming Obligations Would Not Counteract the Anti-Competitive Effects of Other Commission Policies.

Mobility Fund Phase I support recipients are required to allow the collocation of additional equipment under certain circumstances, and their receipt of support is conditioned on compliance with voice and data roaming requirements.[73] The Commission seeks comment on adopting similar requirements for Phase II recipients.[74]

Although U.S. Cellular supports the imposition of the proposed collocation and voice and data roaming requirements for Mobility Fund Phase II recipients,[75] the adoption of these requirements will not be sufficient "to help assure that [funding recipients] do not use public funds to achieve an unfair competitive advantage."[76] The Commission's proposal to extend Phase II support only to a single carrier in each service area constitutes on its face an unfair competitive advantage that the Commission is bestowing on the support recipients.

Thus, the Commission's collocation and roaming requirements amount to nothing more than an unsatisfactory attempt to rein in an anti-competitive result that the Commission itself is

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[72] *Id*. at 46.

[73] *Order* at para. 320.

[74] *Further Notice* at para. 1148.

[75] See Section II.D., *supra*.

[76] *Further Notice* at para. 1148.

creating. If the Commission is concerned that Mobility Fund Phase II support will be unfairly turned to the advantage of recipients—as it professes to be in making its collocation and roaming proposals—then the Commission, as well as consumers in rural areas, would be better served by Phase II disbursement mechanisms that do not limit support to a single provider in each eligible service area.

U.S. Cellular also suggests that, if roaming requirements are imposed on Mobility Fund Phase II recipients, then the Commission should consider the imposition of reciprocal requirements on carriers that elect to roam on mobile broadband networks deployed and operated by Phase II support recipients. U.S. Cellular acknowledges that imposition of such a reciprocal requirement could be beyond the present scope of this rulemaking, and therefore suggests that the Commission should defer final action on its Phase II roaming proposal until it provides opportunity for comment on making any roaming obligation reciprocal. This is especially important in view of the critical need for the Commission to ensure that carriers outside the "Big Two" have access to 4G roaming on commercially reasonable terms going forward.

In this connection, U.S. Cellular urges the Commission to utilize a "shot clock" mechanism to ensure that roaming negotiations are not manipulated by the largest national wireless carriers. U.S. Cellular has recently expressed its support for such an approach in a proceeding currently pending before the Commission.[77]

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[77] *See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411 (2011), *recon. pending*, *appeal docketed*, *Cellco Partnership v. FCC*, Case No. 11-1135 (D.C. Cir. May 13, 2011). Blanca Telephone Company has sought reconsideration of the Commission's action, asking the Commission to reconsider its decision not to impose a shot clock. *Petition for Reconsideration of Action in Rulemaking Proceeding*, FCC Public Notice, Report No. 2938 (rel. Nov. 21, 2011). U.S. Cellular joined with several other parties in supporting the petition for reconsideration. *See* MetroPCS Communications, Inc., NTELOS Holdings Corp., PR Wireless, Inc., Revol Wireless, National Telecommunications Cooperative Association, Rural Cellular Association, Rural Telecommunications Group, United States

G. Other Issues.

1. The Commission Should Use Road Miles To Determine Bidding Units and Coverage Requirements.

The Commission proposes to use the number of road miles in each eligible geographic area as the basis for establishing the number of bidding units and the corresponding coverage requirement that must be met by funding recipients.[78] U.S. Cellular supports this approach, agreeing with the Commission's finding with regard to the Mobility Fund Phase I that "requiring additional coverage of road miles more directly reflects the Mobility Fund's goal of extending current generation ***mobile*** services . . . ."[79] Further, as the Commission points out, basing support on road mile bids also takes into account other important factors, "such as business locations, recreation areas, and work sites—since roads are used to access those areas."[80]

As U.S. Cellular has previously discussed, however,[81] the use of road miles to determine bidding units could lead to problematic results, depending upon decisions made or delegated by the Commission concerning how bids would be compared as part of the reverse auction process.[82]

Cellular Corporation, Comments in Support of the Blanca Telephone Company Petition for Reconsideration, WT Docket No. 05-265 (filed Dec. 16, 2011).

[78] *Further Notice* at para. 1134.

[79] *Order* at para. 350 (emphasis in original).

[80] *Id*. at para. 351 (footnote omitted).

[81] See Section II.B., *supra*.

[82] The use of road miles as the basis for bidding units could result in skewing Mobility Fund disbursements in a manner detrimental to regions of the country where the number of road miles in high-cost areas is relatively low. This is not a problem with the use of road miles *per se*, but rather is a difficulty grounded in the use of a bidding mechanism in which all bids, across all geographic areas, are compared against all other bids.

2. Phase II Funding Recipients Should Be Permitted To Partner with Other Providers.

The Commission seeks comment on whether and to what extent recipients of Mobility Fund Phase II support should be permitted to partner with other providers to meet public interest obligations associated with Phase II.[83] As U.S. Cellular has previously indicated, it supports Commission rules that permit partnering between support recipients and other service providers,[84] particularly if the Commission elects to utilize a single-winner reverse auction mechanism to disburse Mobility Fund Phase II support. U.S. Cellular also notes that allowing partnering as a means of meeting public interest obligations would be analogous to the statutory authorization that an ETC may offer supported services through "a combination of its own facilities and resale of another carrier's services."[85]

Partners should be permitted to provide mobile voice and broadband services through the use of any technology, including wireless and satellite networks, as long as the technology employed is able to deliver a service that meets the broadband public interest obligations adopted by the Commission. Permitting partnering arrangements would benefit consumers by facilitating more accelerated access to mobile voice and broadband services in areas in which such services are not ubiquitously available. In addition, partnering would be more cost effective (and, thus, would place less pressure on the Mobility Fund) than requiring fund recipients to deploy their

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[83] *Further Notice* at para. 1137.

[84] *See* U.S. Cellular *USF-ICC Reform NPRM* Comments at 55.

[85] *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15096-97 (para. 3) (2005) (footnote omitted) (citing 47 U.S.C. § 214(e)(1)(A)).

own facilities as the exclusive means for complying with the Commission's requirements regarding the availability of mobile voice and broadband services in the recipients' service areas.[86]

3. The Commission Should Establish a Ten-Year Term of Support for Phase II Funding Recipients.

The Commission proposes a fixed term of 10 years for Mobility Fund Phase II support.[87] U.S. Cellular agrees with this approach to Phase II funding. Especially in the context of the Commission's proposed Phase II reverse auctions, fixed terms shorter than 10 years would make it extremely difficult for smaller wireless carriers and regional carriers serving rural areas to attract sufficient capital to assist in meeting network deployment obligations mandated by the Commission.

The availability of investment capital for these carriers often is linked to the carriers' ongoing eligibility for the receipt of universal service support. If an auction winner were forced to "win again" in another auction after a short fixed term of support, in order for the carrier to continue to receive Phase II support, it is likely that the level of investment capital available to the carrier would diminish.

4. The Commission Should Adopt a Renewal Mechanism for Phase II Support Recipients.

The Commission asks for comment regarding whether it would be appropriate to establish a renewal opportunity for Mobility Fund Phase II support.[88] U.S. Cellular favors such an approach, as long as the renewal is not automatic, because it would help to stabilize the availability

[86] *See* U.S. Cellular *USF-ICC Reform NPRM* Comments at 55.

[87] *Further Notice* at para. 1138.

[88] *Id*. at para. 1139.

of private investment capital for smaller wireless carriers and regional carriers serving rural areas.

One of the most significant risks of the proposed reverse auction mechanism is that it will have the effect of deflecting private investment capital away from smaller carriers seeking to deploy broadband infrastructure in rural areas. Firms deciding whether to provide investment capital to these carriers typically place considerable weight on the issue of whether the carriers are likely to be eligible to receive universal service support on a continuing basis, as long as they continue to meet eligibility and performance requirements. The reverse auction mechanism replaces this paradigm with a scenario in which any carrier—regardless of its eligibility for funding and successful performance of public interest obligations—is at risk of losing its access to funding.

Consumers are placed in jeopardy by the effects of the reverse auction mechanism regarding the availability of private investment capital because, without the ongoing influx of this capital, deployment of advanced mobile broadband networks in rural areas may be curtailed or abandoned in some rural areas. A renewal opportunity—combined with a reasonably long fixed term of support[89]—would serve to reduce this risk. Establishing a renewal expectancy that enables a carrier to renew its support if it meets its deployment and service obligations would help to temper the adverse effects of the reverse auction mechanism. U.S. Cellular emphasizes that renewal should be dependent upon such a test or similar requirements—and should *not* be automatic—because an automatic renewal procedure would risk perpetuating the availability of Mobility Fund support to unqualified or underperforming carriers.

[89] See the discussion in Section II.G.3., *supra*.

5. Any Modification of Phase II Performance Metrics Should Be Accomplished Through a Rulemaking Proceeding.

The Commission asks for comment regarding whether, and if so, in what ways Mobility Fund Phase II metrics should be modified during the term of support to reflect anticipated advances in technology.[90]

In U.S. Cellular's view, the question of whether performance metrics should be modified should be a matter left to the Commission's discretion, rather than the Commission's making any up-front commitment to modify metrics on any pre-established timetable. Given the unpredictability of the nature and pace of technological changes, the Commission's consideration of any modifications to performance metrics would be accomplished efficiently by monitoring technological developments and taking action as necessary or appropriate.

In addition, the Commission should make a commitment that any such modifications will be undertaken through a rulemaking proceeding. Doing so would provide the obvious benefit of enabling the public to evaluate and comment on the Commission's tentative views regarding the impact of technological developments on the Commission's existing performance metrics, and the manner in which these metrics should be modified.

6. The Commission Should Place Limits on the Use of Package Bidding.

The Commission notes that "[i]t appears that some form of package bidding will likely enhance the [Mobility Fund Phase II] auction by helping bidders incorporate network-wide efficiencies into their bids[,]"[91] but seeks comment regarding whether it should impose any limits on

[90] *Further Notice* at para. 1144.

[91] *Id*. at para. 1156.

the size or composition of package bids, *e.g.*, by allowing flexible packages of blocks or larger geographic units as long as the geographic units are within the boundaries of a larger unit.[92]

U.S. Cellular supports limiting package bids so that such bids are permitted only with respect to aggregations of geographic areas that are within the boundaries of a county. The absence of any such limitation could further enhance the ability of larger carriers to manipulate reverse auction outcomes to their advantage by packaging bids that cover extensive geographic areas. Smaller rural carriers and regional carriers would find it difficult to match such bidding strategies, which would place them at a competitive disadvantage in the auctions.

III. COMPETITIVE PROCESS IN PRICE CAP TERRITORIES WHERE INCUMBENTS REFUSE EXCLUSIVE SUPPORT.

The Commission's proposals for disbursing Phase II CAF support, in areas in which incumbent price cap carriers do not elect the "state-level commitment" option, raise issues that are similar in many respects to proposals made by the Commission concerning Phase II of the Mobility Fund. U.S. Cellular discusses several of these issues in the following sections.

A. The Commission's Reverse Auction Mechanism Should Support More Than a Single Provider in Each Service Area.

The Commission indicates that, in cases in which an the incumbent price cap carrier declines to make a state-level commitment to provide broadband service to all high-cost locations in its service territory in return for model-determined support in each state, the Commission will

[92] *Id*. *See id*. at para. 1211 (raising the same issue in connection with the Commission's proposal to use reverse auctions in price cap territories where the incumbent price cap carrier chooses not to exercise the right of first refusal extended by the Commission).

use a reverse auction mechanism to award support.[93] The Commission explains that "we will generally be supporting a single provider for a given geographic area through this auction."[94]

For the reasons previously discussed,[95] U.S. Cellular opposes this approach. Restricting support to a single carrier in each service area is not competitively neutral, erects barriers to competitive entry, is detrimental to consumers, and fails to comply with statutory mandates to promote competition in connection with the implementation of universal service policies.

B. The Commission Should Design Service Areas in a Manner That Promotes Consumer Interests and Competition.

***Identifying Eligible Areas*.—**In any areas where a price cap ETC declines to make a state-level commitment, the Commission proposes to use reverse auctions to disburse support using the same areas identified by the CAF Phase II model as eligible for support. The Commission also seeks comment on whether it should exclude areas that are served at any speed, at 4 Mbps downstream and 1 Mbps upstream, or at 6 Mbps downstream and 1.5 Mbps upstream.[96]

U.S. Cellular supports an eligibility rule that excludes from the receipt of support any area served at speeds of at least 4 Mbps downstream and 1 Mbps upstream. The Broadband Plan recommended that the speed threshold for fixed broadband, for purposes of providing universal service support, should be set at 4 Mbps downstream and 1 Mbps upstream.[97] For purposes of disbursing funds in areas in which incumbent price cap carriers do not exercise their Commission-mandated entitlement to exclusive funding, making areas eligible for support if they are ***not***

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[93] *Id*. at para. 1195.

[94] *Id*.

[95] See Section II.D., *supra*.

[96] *Further Notice* at para. 1191.

[97] Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) ("Broadband Plan"), at 135.

served by broadband at speeds of at least 4 Mbps downstream and 1 Mbps upstream would effectively promote achievement of the speed threshold recommended in the Broadband Plan.

***Minimum Size Unit for Bidding and Support*.—**The Commission proposes that census blocks should be the minimum geographic building blocks for defining areas for which support will be provided.[98] As U.S. Cellular has previously discussed, it has concerns with the Commission's reliance on census blocks for purposes of defining areas for which universal service support will be disbursed, and therefore opposes the Commission's proposal.[99]

Census blocks could be used as the basis for determining areas eligible for support only if the Commission adheres to the requirements of Section 214(e)(5) of the Act relating to the use of rural telephone companies' study areas as the areas eligible for universal service support (unless modified by the Commission pursuant to procedures outlined in Section 214(e)(5)).

***Prioritizing Areas*.—**The Commission seeks comment on whether it should target areas currently without any broadband service for priority treatment in whatever competitive bidding mechanism it adopts for the disbursement of CAF Phase II support in price cap territories where the incumbent carrier refuses to undertake a statewide commitment to provide broadband service pursuant to Commission requirements.[100] U.S. Cellular opposes this approach for the reasons previously discussed,[101] namely, that it would detract from the overall goal of deploying 4G broadband networks throughout rural America.

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[98] *Further Notice* at para. 1191.

[99] See Section II.E., *supra*.

[100] *Further Notice* at para. 1193.

[101] See Section II.E., *supra*.

C. Other Issues.

1. Funding Recipients in Price Cap Territories Should Be Permitted To Partner with Other Providers.

Similar to its proposal in the context of Phase II of the Mobility Fund, the Commission requests comment on whether and to what extent carriers receiving support in price cap territories through a competitive bidding process should be permitted to partner with other providers to meet their public interest obligations.[102] U.S. Cellular supports the authorization of partnering because, for example, such arrangements would benefit consumers by helping to accelerate access to mobile voice and broadband services in unserved or underserved areas.[103]

2. The Commission Should Establish a Five-Year Term of Support, and Should Provide a Renewal Opportunity.

The Commission proposes a five-year term of support for providers that receive support through the Phase II auction for price cap territories, noting that this is equal to the term adopted for providers that accept state-level model-determined support.[104]

U.S. Cellular agrees with this approach, since there appears to be no basis for varying from the five-year term already established for incumbents that exercise the right of first refusal offered by the Commission. Moreover, a five-year term should prove to be sufficient if it is coupled with a renewal opportunity.

As it does with respect to Phase II of the Mobility Fund, the Commission also asks "whether it is appropriate to establish any sort of renewal opportunity . . . ."[105] For the reasons U.S. Cellular discussed in the context of the Mobility Fund, it favors establishing a renewal op-

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[102] *Further Notice* at para. 1196.

[103] See Section II.G.2., *supra*.

[104] *Further Notice* at para. 1197.

portunity because a renewal mechanism would contribute to stabilizing the availability of private investment capital for smaller wireless carriers and regional carriers serving rural areas.[106]

3. Carriers Seeking Support Should Not Be Required To Finance a Fixed Percentage of Network Deployment from Sources Other Than CAF Funding.

The Commission asks whether it should require that any carrier receiving Phase II CAF support for price cap territories through the reverse auction mechanism should be required to finance a fixed percentage of any build-out with non-CAF or private funds.[107] The Commission has rejected such an approach for purposes of Phase I of the Mobility Fund,[108] and U.S. Cellular suggests that such a requirement should be rejected for the Phase II CAF reverse auction mechanism as well. The requirements proposed by the Commission for carriers' certification of their financial and technical capabilities[109] should be sufficient to ensure that funding recipients will meet deployment and other public interest obligations.

4. Bidders Should Be Permitted To Propose Different Prices at Which They Would Offer Services at Different Performance Levels.

The Commission proposes to use performance requirements for recipients of support awarded through the CAF Phase II competitive bidding process for price cap territories that are

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[105] *Id*.

[106] See Section II.G.4., *supra*.

[107] *Further Notice* at para. 1200.

[108] *Order* at para. 404 (finding that "[w]hile requiring that Fund recipients put up a share of their own funds for a project may be an effective way to ensure that the recipient has sufficient stake in the project to effect its completion, we do not believe this requirement is needed in light of the other measures we adopt here").

[109] *See Further Notice* at para. 1200.

the same as those adopted in the *Order* for carriers that accept model-determined support pursuant to the state-level broadband commitment mechanism.[110]

The Commission also seeks comment, however, on an alternative approach aimed at generating more competitive bidding by allowing more technologies to compete for funding. Specifically, the Commission asks whether it should relax the minimum performance requirements by permitting individual service providers to propose different prices at which they would be willing to offer services at different performance levels. The Commission then would select the winning bids based on both the prices and the performance scores.[111]

U.S. Cellular supports this alternative approach, agreeing with the Commission's suggestion that the alternative approach should result in more competitive bidding because it would allow more technologies to compete for funding.[112] U.S. Cellular also finds persuasive the Commission's suggestion that this approach would enable the CAF budget "to yield greater coverage at acceptable broadband performance standards . . . ."[113] As a general matter, U.S. Cellular is concerned that the Commission's preference appears to be to set stringent budgetary limitations and then to devise disbursement and related policies tailored to constrict funding within these limitations.[114] In this case, however, the Commission's alternative approach likely would be an effective means of maximizing the delivery of broadband services within the framework of the Commission's budget.

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[110] *Id*. at para. 1203.

[111] *Id*. at para. 1204. The Commission cites proposals made by ViaSat, Inc., and Wild Blue Communications, Inc. *Id*. at para. 1204 n.2279.

[112] *Id*. at para. 1204.

[113] *Id*.

[114] In U.S. Cellular's view, the single-winner reverse auction mechanism is a prime example of this approach.

5. Carriers That Do Not Exercise Their Right of First Refusal Should Be Ineligible To Participate in Reverse Auctions.

The Commission advises that it is not inclined to restrict the eligibility of carriers "that could have accepted model-determined support for the area that will be auctioned" to participate in reverse auctions for that area.[115]

U.S. Cellular opposes such an approach. The Commission's right of first refusal provides incumbent price cap carriers with a substantial advantage by enabling them in effect to continue to operate as monopoly service providers in their existing service areas, fortified by their exclusive access to CAF support. U.S. Cellular sees no public policy basis for adding to this advantage by giving incumbents the opportunity to weigh their self-interest and then select the funding mechanism—either right of first refusal or the reverse auction mechanism—that would better solidify their competitive advantage.

IV. OTHER ISSUES.

A. Broadband Public Interest Obligations.

***Measuring Broadband Service*.**—The Commission seeks comment on whether it should adopt a uniform methodology for measuring broadband performance, and, if so, whether that methodology should be uniform across different technologies.[116] The Commission also asks how wireless providers should measure speed.[117]

The Commission should adopt speed measurement criteria that effectively account for the unique characteristics of mobile broadband networks. U.S. Cellular agrees with the Commission's observation that, in the case of networks that provide mobile services, "capacity per user

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[115] *Further Notice* at para. 1201.

[116] *Id*. at para. 1014.

[117] *Id*.

changes over time as the number of users in a given sector increases and decreases."[118] This characteristic of mobile wireless networks warrants the use of measurement methodologies that are tailored to accommodate the unique features of mobile networks.

One such characteristic, as the Commission's observation implies, is that "mobile broadband networks are periodically subject to congestion, which can have a temporary effect on broadband speeds available to end users."[119] A method used to account for these congestion issues, and previously suggested by U.S. Cellular, involves reliance on average sector throughput as a means of qualifying any strict application of specific speed requirements for supported mobile broadband services. This measurement technique accounts for the number of concurrent users on a mobile broadband network, while also reflecting other factors that may affect individual user throughput, such as distance from the cell site and interference.[120]

U.S. Cellular urges the Commission to consider this or a similar approach in developing a speed measurement methodology that accounts for the unique characteristics of mobile broadband networks. The use of an average speed or average throughout methodology would account for the characteristics of mobile networks more reasonably and accurately than imposing a uniform speed methodology that would apply throughout a mobile carrier's service area, including at the cell edge.[121]

***Reasonably Comparable Services*.—**The Commission asks whether it should adopt a presumption that, if a given carrier is offering the same rates, terms, and conditions (including

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[118] *USF-ICC Reform NPRM*, 26 FCC Rcd at 4596 (para. 117).

[119] U.S. Cellular *USF-ICC Reform NPRM* Comments at 48.

[120] *Id*.

any capacity limits) to both urban and rural customers, this will be sufficient to meet the statutory requirement that services be reasonably comparable.[122]

Subject to the caveat discussed below, U.S. Cellular supports the adoption of such a presumption. If rate, terms, and conditions are identical, then it should follow—in virtually irrebuttable fashion—that they are "reasonably comparable." If a carrier demonstrates that its service offerings to rural customers do not differ from the offerings the carrier makes to urban customers, then the carrier should not be required to make any further showing for purposes of establishing that its services in rural areas are reasonably comparable to those provided to urban customers.

The use of a presumption would ease administrative burdens for both carriers and the Commission and, more importantly, would serve the interests of rural consumers because the presumption would ensure that CAF and Mobility Fund support is being used to provide rural consumers with access to services and rates on a par with those available in urban areas.

Although U.S. Cellular strongly supports Commission policies intended to serve the statutory principle regarding the use of universal service mechanisms to further the comparability of services available in rural and urban areas, U.S. Cellular has concerns regarding the basis for the approach taken by the Commission in the *Order* and in the *Further Notice*. The Act provides that:

> Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to

[121] As U.S. Cellular has previously discussed, if the Commission decides to adopt a single broadband speed threshold for Mobility Fund Phase II support recipients, then the speed threshold selected by the Commission should be 4 Mbps downstream and 1 Mbps upstream. See Section II.F.1., *supra*.

[122] *Further Notice* at para. 1027.

> those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[123]

The Commission is charged with advancing this principle by funding supported services made available to consumers in rural, insular, and high-cost areas. The Commission, however, has opted in the *Order* not to treat broadband service as a ***supported*** service for purposes of its universal service support mechanisms.[124]

In U.S. Cellular's view, the Commission creates an entanglement to the extent it purports to fashion policies to promote the comparability of both fixed and mobile broadband services available in rural and urban areas, while at the same time refusing the classify broadband as a supported service. Given the uncertainties surrounding the Commission's statutory authority to use universal support mechanisms to support services that the Commission explicitly does not define as supported services, U.S. Cellular suggests that a more straightforward and legally defensible approach would be for the Commission instead to include broadband on the list of supported services.

Benchmarks for Fixed and Mobile Broadband Services.—The Commission asks whether fixed and mobile broadband services should have different or the same benchmarks for purposes of reasonable comparability.[125] U.S. Cellular supports the development of different benchmarks, because doing so would avoid the risk of imposing wireline-centric benchmark requirements on mobile broadband service providers that would have little or no relevance to the deployment and operation of mobile broadband networks, and that would compromise the ability of mobile broadband providers to comply with the ill-suited benchmarks.

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[123] 47 U.S.C. § 254(b)(3).

[124] *Order* at para. 65.

[125] *Further Notice* at para. 1023.

B. ETC Service Obligations.

The Commission points to a potential anomaly created by its new rules, explaining that, as an example, "competitive ETCs that bid for Mobility Fund Phase I support will be required to offer advanced mobile service in specific unserved census areas, but their state or federally-defined service territory may be substantially larger than their bid areas."[126]

The Commission seeks comment on two approaches for addressing this mismatch between the definition of service areas for purposes of Mobility Fund Phase I support and the obligation of ETCs pursuant to Section 214(e)(1) of the Act to offer service throughout their service areas. The Commission suggests it could "adjust" the Section 214(e)(1) requirement by forbearing from it on a case-by-case basis. Alternatively, it could adopt a federal framework for the process to be used in redefining service areas, by the states or the Commission, as appropriate.[127]

U.S. Cellular favors the second approach as a more permanent and effective means of synchronizing the statutory provisions with the manner in which the Commission has defined eligible service areas for purposes of Mobility Fund Phase I support and for other purposes, although U.S. Cellular cautions that the process utilized by the Commission in adopting a federal framework for redefining service areas should not adversely affect the timetable for the disbursement of Mobility Fund support.

U.S. Cellular has previously argued that the Commission should take appropriate steps to encourage state regulatory commissions to adopt new study area boundaries that establish more narrowly targeted service areas for purposes of disbursing ongoing universal service support un-

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[126] *Id*. at para. 1096.

[127] *Id*. at paras. 1096-1097.

der the Commission's new CAF and Mobility Fund mechanisms.[128] While the Commission apparently would have authority to forbear from imposing ETCs' Section 214 obligations on a case-by-case basis,[129] this piecemeal approach, in U.S. Cellular's view, is less attractive than a systematic Commission effort to develop and implement a federal framework for the process to be used in redefining service areas.

The Commission seeks comment on a proposal advanced by AT&T that the Commission should "reinterpret" Section 214(e)(1) to require the provision of service only in areas where those services actually are supported under the Commission's funding mechanisms.[130] U.S. Cellular urges the Commission to reject AT&T's proposal, since such an approach would be in tension with the statutory language in Section 214(e)(5) that the service area of a rural telephone company is its study area, unless the Commission *and the states* establish a different definition.[131] The approach advocated by AT&T would impermissibly override the procedural requirements of Section 214(e)(5).[132]

As a general matter, however, U.S. Cellular is sympathetic to AT&T's suggestion that service areas should be defined in a manner that results in the imposition of CAF and Mobility Fund public interest obligations only in areas for which carriers are receiving CAF or Mobility

[128] U.S. Cellular *USF-ICC Reform NPRM* Comments at 72-73.

[129] The Commission notes that it previously has taken action to forbear from Section 214(e)(1) and Section 214(e)(5) requirements. *Further Notice* at para. 1097 & n.2226. See Section II.E., *supra*.

[130] *Further Notice* at paras. 1099-1100 (citing Letter from Heather Zachary, Counsel to AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al*., at 3-5 (filed Oct. 19, 2011) ("Zachary Letter")).

[131] *See id*. at para. 1100.

[132] AT&T also suggests, as an alternative, that the Commission should grant blanket forbearance under Section 10 of the Act to the extent that Section 214(e)(1) requires ETCs to offer service in areas where they do not receive any universal service support. *Id*. at para. 1099 (citing Zachary Letter at 5). U.S. Cel-

Fund support. On the other hand, any service area redefinition in the manner proposed by AT&T should guard against the effect of reducing any regulatory obligations that apply to carriers irrespective of their receipt of any CAF or Mobility Fund support.

C. Ensuring Accountability.

In the *Order* the Commission has required winning bidders for Mobility Fund Phase I support to provide the Commission with an irrevocable stand-by letter of credit ("LOC"), issued by a bank that is acceptable to the Commission, "in an amount equal to the amount of support as it is disbursed, plus an additional percentage of the amount of support disbursed which shall serve as a default payment, which percentage will be determined by the Bureaus [*i.e.*, the Wireline Competition Bureau and the Wireless Telecommunications Bureau] in advance of the auction."[133]

In the *Further Notice*, the Commission asks whether, as an alternative to LOCs or other financial guarantees, the Commission should impose penalties, such as revocation of ETC designations, denial of certifications resulting in the prospective loss of support, or recovery of past support amounts, as appropriate remedies for any failure by a support recipient to meet the public interest obligations adopted in the *Order*.[134] In U.S. Cellular's view, the Commission should use forfeiture requirements instead of LOCs as the device for enforcing compliance with public interest obligations. The LOC requirement has the effect of reducing the amount of capital available to support recipients, and thus diminishes the value realized from the disbursement of CAF and Mobility Fund support. This is especially true with respect to smaller carriers, which often-

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lular is not inclined to support this forbearance proposal because it would risk undermining the appropriate balancing of "federal and state roles in the designation and oversight of ETCs . . . ." *Id.* at para. 1100.

[133] *Order* at para. 444.

[134] *Further Notice* at para. 1110.

times have more limited access to capital markets. LOC requirements can significantly constrain borrowing capacity.

The Commission also seeks comment on whether ETCs that will receive less than a specified amount of CAF or Mobility Fund support should be exempted from any requirement to provide an LOC.[135] If the Commission decides to rely on the LOC mechanism, then, in U.S. Cellular's view, it would be unwise to undermine the effective performance of the CAF and Mobility Fund support mechanisms by permitting any subset of carriers to avoid the Commission's public interest requirements and then escape any accountability. U.S. Cellular therefore urges the Commission to apply the LOC mechanism in a uniform manner, so that all funding recipients face the same consequences in the event of non-compliance.

D. Connect America Fund for Rate-of-Return Carriers.

Accommodating the Rural Associations' Budget**.—**The Commission observes that the overall budget target it adopted for rate-of-return carriers in the *Order* ($2 billion over the next six years) falls short of calibrations made by the Rural Associations[136] aiming for a budget target that reaches $2.05 billion in combined funding for USF and the Associations' suggested access restructure mechanism in the first year of implementation, and that may grow to $2.3 billion by the sixth year.[137] Given this disparity, the Commission asks how it could "best accommodate the Rural Association Plan within the budgetary framework adopted" in the *Order*.[138] Specifically, the Commission seeks comment on this question: If savings are realized in other components of

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[135] *Id*. at para. 1107.

[136] The Rural Associations are comprised of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance.

[137] *Further Notice* at para. 1034.

CAF—for example, if reverse auctions lead to support being disbursed through CAF for price cap areas at levels below budgeted amounts—should these savings be used to increase funding for rate-of-return carriers?[139]

In evaluating the Commission's question, it is useful to review the disbursement allocation decisions the Commission has made in the *Order*. CAF Phase II targets $400 million annually for mobile broadband providers, compared to $3.8 billion in annual support for price cap and rate-of-return carriers. As noted above, $2 billion of the $3.8 billion will be received by rate-of-return carriers. Thus, rate-of-return carriers are slated by the Commission to receive ***five times as much funding*** as mobile broadband providers.[140] The Commission has chosen these disbursement allocations even though President Obama has established a goal of achieving virtually ubiquitous wireless broadband coverage,[141] line counts for rural incumbent rate-of-return carriers are shrinking significantly,[142] and consumer preferences for mobile voice and broadband services continue to increase.[143] Given these factors, U.S. Cellular suggests that, if any savings are realized in budgeted CAF disbursements, the Commission should shift the savings to the Mobility Fund.

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[138] *Id.*

[139] *Id.*

[140] While it is correct that mobile broadband providers can compete for a portion of the $1.8 billion in CAF Phase II funding in price cap territories, through participation in reverse auctions, the fact remains that these auctions are triggered only in cases in which incumbent price cap carriers do not exercise their right of first refusal. The Commission—through the right-of-first-refusal mechanism—has given the incumbents an exclusive opportunity to claim virtually the entirety of the $1.8 billion in funding during the first five years of CAF Phase II.

[141] *See* Obama Remarks at 8.

[142] Overall, local loops have declined nearly 32 percent from 1998 to 2008 (the most recent year for which statistics are available). *Compare* FCC, TRENDS IN TELEPHONE SERVICE, Table 20.1 (March 2000) (179,822,123 local loops at year-end 1998) *with* FCC, TRENDS IN TELEPHONE SERVICE, Table 7.2 (Sept. 2010) (122,596,593 local loops at year-end 2008).

[143] *See*, *e.g.*, U.S. Cellular *USF-ICC Reform NPRM* Comments at 4 (citing Industry Analysis and Tech. Div., WCB, FCC, "Internet Access Services: Status as of June 30, 2010," at 3 & Table 1) (noting that dur-

***Utilizing Savings from Reducing the Rate of Return*.—**The Commission seeks comment on whether any savings realized from reducing the current rate of return[144] should be used to establish a new CAF mechanism for rate-of-return carriers that would support new broadband investment. Such an approach would serve to exacerbate the already substantial discrepancy between the Commission's funding allocations for rate-of-return carriers and mobile broadband providers, and U.S. Cellular therefore opposes such an approach. The Commission should instead consider repurposing such savings by investing them in the Mobility Fund.

E. Annual Reporting Requirements for Mobile Service Providers.

The Commission seeks comment on whether its new annual reporting rule for ETCs should be modified to "reflect basic differences in the nature and purpose of the support provided for mobile services."[145] The Commission asks, for example, whether it should continue to require from mobile service providers information concerning the number of requests for service from potential customers within the providers' service areas that were unfulfilled during the past year, in view of the fact that the performance measure for Mobility Fund support recipients is coverage of the supported areas, and not the number of subscribers to the supported service.[146]

As U.S. Cellular has discussed in other contexts, it is important for the Commission to avoid framing new wireline-centric universal service rules and requirements that can lead to inadvertent results and unnecessary burdens when applied to mobile broadband service providers.

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ing the first half of 2010, subscribership for mobile wireless devices and data plans for full Internet access increased from 55.8 million to 71.2 million, an increase of 27.6 percent, while, during the same period, fixed broadband connections increased only 1.2 percent, from 80.7 million to 81.7 million).

[144] The Commission has undertaken a preliminary analysis that conservatively suggests that the authorized interstate rate of return should be no more than 9 percent (compared to the current rate of return of 11.25 percent). *Further Notice* at para. 1057.

[145] *Id*. at para. 1118.

[146] *Id*.

U.S. Cellular therefore agrees that the Commission's reporting rules should be crafted in a manner that reflects differences in mobile carriers' operations and in the "nature and purpose of support" provided to Mobility Fund support recipients. For example, as the Commission suggests, there appears to be no basis for requiring mobile carriers to report on the number of unfulfilled service requests since this information is not pertinent to Mobility Fund performance measures.

V. CONCLUSION.

U.S. Cellular respectfully urges the Commission to delay its deliberations regarding the adoption of a disbursement mechanism for Mobility Fund Phase II, so that the Commission is able to evaluate the results of its use of a single-winner reverse auction for the disbursement of Phase I support. As U.S. Cellular has explained in these Comments, such a delay would be prudent because it would give interested parties an opportunity to comment on the outcome of the Phase I auction and it would provide the Commission with the tools necessary to make an informed, data-driven decision regarding the Phase II mechanism.

U.S. Cellular is convinced that the Phase I auction results will confirm the skepticism of U.S. Cellular and numerous other commenters regarding the disadvantages of a single-winner reverse auction, and therefore underscore the advisability of using a forward-looking economic cost model as the basis for disbursing Phase II support.

Finally, if the Commission ultimately decides to use a single-winner reverse auction for Phase II support, U.S. Cellular respectfully urges the Commission not to award support based

[*Remainder of Page Intentionally Left Blank*] upon a comparison of all bids across all geographic areas, since such an approach would unfairly penalize economically efficient projects designed to serve higher-cost areas.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By:___________________________

David A. LaFuria
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP
8300 Greensboro Drive, Suite 1200
McLean, Virginia 22102
(703) 584-8678

Grant B. Spellmeyer
Executive Director – Federal Affairs &
Public Policy
UNITED STATES CELLULAR CORPORATION
8410 West Bryn Mawr
Chicago, Illinois 60631
(773) 399-4280

January 18, 2012